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Justice Dalianis Discusses Family Law Appellate Caseload

By: Dan Wise

NH Supreme Court Senior Associate Justice Linda Dalianis met last month with the NHBA Family Law Section to gather information about family law cases on the appellate docket.

Dalianis and Supreme Court Clerk Eileen Fox attended a regular meeting of the Family Law Section on May 11, not to bring a proposal, but to pose questions and consider ideas about how to handle what is becoming a more significant share of its caseload. According to statistics provided by Fox, 132 family law appeals were filed in 2005, out of a total of 938 cases.

Many (60, or almost half) of the divorce appeals involve *pro se* litigants, and due to their nature, it can be difficult to discern whether divorce cases are truly ready for appeal. There have been situations, noted Fox, where a single divorce case has been the subject of more than one appeal in the same year, with issues raised regarding different post-divorce orders.

As a result of these and other factors, divorce cases can be unduly burdensome on those who have to respond to these appeals, and they can take up an inordinate amount of the courts' administrative and judicial resources – especially when many of the appeals deal with fact-based questions, rather than issues of law.

Dalianis, a former marital master and superior court judge before her appointment to the Supreme Court, approached Family Law Section Chair Thomas Cooper with a request to speak with the section, wanting to open a dialogue with family law practitioners on how best to handle this potentially difficult area.

Cooper was impressed with the court's willingness to tap the expertise of the Bar, especially before the problems become a crisis. "What I find extraordinary is that the processing time for the court is as short as it has ever been. It is not as if the court is severely backlogged."

The discussion at the section meeting did not produce any immediate solutions. Justice Dalianis asked the section members if it were possible to consider making appeals of post-divorce orders discretionary, but several attorneys suggested that such a division might not be as successful in weeding out unnecessary, fact-based appeals as some other distinction; however, no one at the meeting seemed firmly committed to any approach.

Fox said some of these questions may be raised at the upcoming public hearing of the Supreme Court Advisory Committee on Rules, which Dalianis chairs.

The meeting also included a presentation by attorney Mark Cornell on bankruptcy issues in family law cases.

Materials on other Family Law Section meetings are available to section members in the For Members area of the Bar's Web site at www.nhbar.org. Look for "Sections" and click on the Family Law Section.

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